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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,852	02/22/2002	Denise Crites Tears	17,519	3759

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KIMBERLY-CLARK WORLDWIDE, INC.  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER
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ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/081,852

Applicant(s)

TEARS ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 7/24/03, 7/28/03.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Morita et al. (5,704,928).

Morita discloses an absorbent article, as shown in figure 1, comprising an absorbent 4 having first and second longitudinal sides. A liquid permeable wrapper 2 encloses the absorbent 4, as shown in figure 3, and extends laterally outward a distance of at least 10 mm, as disclosed in column 4, lines 37-45, to form a pair of fringes 21. The fringes 21 are capable of being biased upwards to form upstanding side walls forming a pair of reservoirs 10, as shown in figure 3.

With respect to claim 2, the fringes extend between 10 mm and 30 mm, as disclosed in column 4, lines 37-45.

With respect to claims 3 and 4, an impediment layer 13 comprising adhesive is positioned below the absorbent 4, as shown in figure 3.

With respect to claim 5, the wrapper 2 has first and second side edges and is C-folded around the absorbent 4 such that the side edges overlap, as shown in figure 3.

With respect to claim 9, the absorbent 4 has a height of at least half the length of the fringes 21, as shown in figure 3. The fringes are described in column 4, line 42, as

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having a length of 20 mm. The absorbent 4 therefore has a height of at least 10 mm, or half the length of the fringes 21.

With respect to claim 10, the wrapper 2 has first and second side edges and is C-folded around the absorbent 4 such that the side edges overlap, as shown in figure 3.

With respect to claim 11, the absorbent 4 has a height of at least half the length of the fringes 21, as shown in figure 3. The fringes are described in column 4, line 42, as having a length of 20 mm. The absorbent 4 therefore has a height of at least 10 mm, or half the length of the fringes 21.

With respect to claim 12, the upstanding side walls 24 are not attached to elastic 40, as shown in figure 3, and are therefore free of elastic. The side walls 24 is a portion of loop member 21, which is described in column 5, lines 24-30, as being completely unattached to elastic 40.

With respect to claim 13, an impediment layer is positioned between the wrapper 2 and the absorbent 4 and is formed from an adhesive, as disclosed in column 12, line 65 to column 13, line 20.

With respect to claim 14, an impediment layer 3 is positioned between the wrapper 2 and the absorbent 4 and is formed from a polyethylene sheet, as disclosed in column 14, lines 26-29.

With respect to claim 16, a non-skid surface 13 contacts the undergarment, as shown in figure 3.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 8, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morita et al. (5,704,928).

Morita discloses all aspects of the claimed invention with the exception of the side edges of the wrapper being abutted or space apart. It would have been obvious to one of ordinary skill in the art at the time of invention to have the side edges of the wrapper being abutted or space apart rather than overlapped, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

With respect to claim 18, an impediment layer 3 is positioned below the absorbent 4 and enclosed by the wrapper 2, as shown in figure 3.

With respect to claim 19, the absorbent 4 comprises at least two layers, as disclosed in column 11, lines 28-29.

With respect to claim 20, the absorbent 4 contains superabsorbent, as disclosed in column 11, line 21.

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Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morita et al. (5,704,928) as applied to claims 1 and 6 above, and further in view of Rosseler et al. (5,516,567).

Morita discloses all aspects of the claimed invention but remains silent as to the type and basis weight of the nonwoven material comprising the wrapper.

Rosseler discloses the use of a spunbond nonwoven material having a basis weight of 0.65 osy, as described on column 5, lines 39-42, as a suitable material for forming a wrapper of an absorbent article.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the wrapper of Morita from a spunbond material having a basis weight of about 0.65 osy, as taught by Rosseler, to provide the article with a suitable topsheet.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morita et al. (5,704,928) as applied to claim 10 above, and further in view of Van Iten (5,221,275).

Morita discloses all aspects of the claimed invention with the exception of securing the article the undergarment with a hook fastener.

Van Iten discloses the use of hook fasteners 142 to secure an absorbent article to an undergarment without the use of adhesive, as described in column 2, lines 35-56.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to secure the article of Morita with the hook fasteners of Van Iten to obviate the need for adhesive.

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Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morita et al. (5,704,928) as applied to claim 17 above, and further in view of Faulks et al. (5,356,403).

Morita discloses all aspects of the claimed invention but remains silent as to the relative percentages of superabsorbent in the layers of the absorbent.

Faulks discloses an absorbent article having a first absorbent layer 34 and a second absorbent layer 36, as shown in figure 4. The first absorbent layer 34 comprises a higher percentage of superabsorbent than the second absorbent layer 36, as disclosed in column 8, lines 11-13. Having a higher percentage of superabsorbent in the first absorbent layer 34 provides the article with greater leakage protection, as disclosed in column 10, Table 1.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to have a higher percentage of superabsorbent in the first absorbent layer of Morita, as taught by Faulks, to provide the article with greater leakage protection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,371,948 pertains to an absorbent article having a wrapper and fringes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CIA

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June 10, 2004

*K.M. Reichle*  
KARIN REICHEL  
PATENT EXAMINER